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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/697,330	10/31/2003	Kendall Rycroft	4677-0103P	8514
2292	7590	09/15/2006	EXAMINER	
BIRCH STEWART KOLASCH & BIRCH PO BOX 747 FALLS CHURCH, VA 22040-0747			WEINSTEIN, STEVEN L	
			ART UNIT	PAPER NUMBER
			1761	

DATE MAILED: 09/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/697,330

Applicant(s)

RYCROFT, KENDALL

Examiner

Steven L. Weinstein

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 10/31/03.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____.

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Claims 6-12 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

In regard to claims 6 and 12, as disclosed, it is not clear how the recited lighting device (shown in figures 3 and 4) is associated with the recited articles disclosed and shown in figures 1 and 2. Also, in regard to claim 7, as disclosed, it is not clear how the structure shown in figure 2 manages to cover the entire lollipop as recited. At best, the figure is in the nature of a schematic "black box" whose details are either not shown or unclear. If applicant chooses to respond to this Office action, applicant is cautioned about the insertion of New Matter.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1,2,4, and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by Shecter (2002/0090423).

In regard to claim 1, Shecter discloses a candy wrist holder comprising a flexible wrist bracelet (e.g., page 1, col. 1, last line), a securing member receiving a candy and securely holding the candy in an edible position and a cap (e.g., #8) securely attached

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to the flexible wrist bracelet and covering the securing member so that the candy is completely covered in the securing member and protected from dirt and debris. Thus contrary to what is disclosed in this pending application, Shecter does teach covering the candy when not in use. In regard to claims 2, 4 and 5, Shecter discloses, respectively, the holder can be made from plastic, the candy is hard and edible, and that the cover can be hingedly connected to the holder (e.g., page 2, col. 2, para. 3), and thus, the cover can be detached from the candy while still secured to the holder.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Shecter.

Claim 3 recites that the candy is edible and gummy soft. Shecter does not specifically disclose gummy candy. However, gummy candies are, of course, notoriously conventional, and to modify Shecter and substitute one conventional candy for another conventional candy, for its art recognized and applicants intended function, would therefore have been an obvious matter of choice.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schecter, further in view of Fernandez et al (6,135,606), Coleman et al (6,811,279), Gordon (6,659,619), Coleman et al (2003/0067772), Schlotter (4,914,748), Weber et al (6,416,800), VanderSchuit (2005/0083676), Johnson (6,619,816), Schreiber et al (4,009,381), and Carr et al (4,779,173).

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Claim 6 recites a housing having a light source, an electrical power source, and fiber optic filaments. As noted above, the relationship between this structure and the wrist holder is unclear. In any case, as disclosed, the structure is employed to provide the additional novelty of light. As evidenced by Fernandez et al, Coleman et al ('279), Gordon, Coleman et al ('772), Schlotter, Weber et al, VanderSchuit, Johnson, Schreiber, and Carr et al, it is notoriously conventional to provide these elements in a housing, to add the additional factor of light to either edible or inedible products. To therefore modify Schechter and provide a light and power source and fiber optic elements to create light effects would therefore have been obvious. It is noted that the art taken as a whole teaches these elements positioned below the product in a base.

Claims 7-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schechter in view of Chan (6,120,816) or vice versa, both further in view of Coleman et al (2003/0108644), Shecter (5,615,941), Shecter (5,681,200), and Crosbie (6,187,352).

As noted above, the structural elements of claim 7, and their relationship to each other, appear to be based on a non-enabling disclosure. In any case, in regard to claim 7, Schechter is relied on as above to teach it was conventional to provide a flexible wrist bracelet with a candy associated therewith. Claim 7 recites that the assembly includes a candy with a stick, a pivotal receiver for the stick, a cover for covering the candy, and that the receiver has a spring loaded actuating means for swinging the candy up. Schechter discloses the candy can be secured to a stick or post as shown in fig. 6. Chan also discloses a candy associated with a stick or post as shown in fig. 14 and discloses that the confection and its support is attached to a pivotal receiver that has a spring

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loaded actuating means for swinging the candy up and making it accessible (e.g., col. 5, para. 2 and 3), and that the candy can be positioned in a cover (e.g. #80). To modify Schechter and substitute one conventional housing arrangement for another conventional housing arrangement for its art recognized and applicants intended function would therefore have been obvious. Similarly, since Chan teaches it is known to provide a candy housing arrangement as recited, and Schechter discloses providing a candy housing arrangement attached to a wrist bracelet, to modify Chan and associate the housing with a wrist bracelet for its art recognized and applicants intended function would therefore have been obvious. Coleman et al ('644) is relied on as further evidence of providing a candy and a housing wherein the candy can be associated with a stick or post. Shecter ('941 and '200) and Crosbie are relied on as further evidence of candy and sticks that are movable either in or out of a housing or alongside a housing. Claims 8-11 are rejected for the reasons given above.

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 7-11 above, and further in view of Fernandez et al (6,135,606), Coleman et al (6,811,279), Gordon (6,659,619), Coleman et al (2003/0067772), Schlotter (4,914,748), Weber et al (6,416,800), VanderSchuit (2005/0083676), Johnson (6,619,816), Schreiber et al (4,009,381), and Carr et al (4,779,173).

It would have been obvious to modify the combination and provide a lighting system for the reasons given in the rejection of claim 6 above.

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All of the additional references cited on the PTO892 form are cited as pertinent art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven L. Weinstein whose telephone number is 571-272-1410. The examiner can normally be reached on Monday-Friday 7:00 A.M.-2:30 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Steve Weinstein
STEVE WEINSTEIN
PRIMARY EXAMINER 1761
9/13/06